



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1995

Ms. Clarice Cefai
Open Records Coordinator
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR95-1224

Dear Ms. Cefai:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 35376.

The Texas Department of Health (the "department") has received a request for total Texas Medicaid payments per month for psychiatric services and for filling psychiatric or psychoactive prescription drugs for the past 15 months. You claim that section 552.101 of the Government Code exempts the requested information from required public disclosure.

In Open Records Decision No. 584 (1991), this office addressed the extent to which the Open Records Act required the Texas Department of Human Services to release information relating to individuals receiving, among other things, Medicaid assistance. This office concluded that both state and federal law prohibit public release of information about Medicaid *recipients* by limiting disclosure to purposes directly connected to the administration of the Medicaid programs. Open Records Decision No. 584 at 3; *see also* 42 U.S.C. § 602(a)(9); Hum. Res. Code § 12.003; 42 C.F.R. § 431.300.

You claim that the requested information concerns Medicaid recipients and that therefore state and federal law prohibits its release. In 1991, the Seventy-Second Legislature transferred administration of federal medical assistance funds from the Texas Department of Human Services to the Texas Health and Human Services Commission (the "commission"). Acts 1991, 72d Leg., 1st C.S., ch. 15, § 1.01, at 287 (codified at V.T.C.S. art. 4413(502), § 16). The commission was also given broad oversight powers

over "health and human service agencies," including the power to review health and human service agency rulemaking. *Id.* at 286-87 (codified at V.T.C.S. art. 4413(502), §§ 15, 16). The department is a health and human service agency, *id.* at 287 (codified at V.T.C.S. art. 4413(502), § 19), subject to the commission's broad oversight authority. *See also* Act of March 9, 1995, 74th Leg., R.S., ch. 6, § 1, 1995 Tex. Sess. Law Serv. 27-28 (Vernon) (clarifying that although the Texas Health and Human Services Commission is the state agency that administers Medicaid funds, it may "delegate to any health and human services agency the authority to operate or assist in the operation of any Medicaid program"). In addition, the department administers the Texas Medicaid Vendor Drug Program. 25 T.A.C. § 14.1(e)(1). Thus, to the extent that it administers this program, the department is subject to federal and state regulations governing the disclosure of information concerning Medicaid recipients.

We do not believe that the requested information relates to Medicaid recipients, it is merely a request for total Texas Medicaid payments on a monthly basis for specific services and types of prescriptions provided. As such, the information does not concern Medicaid recipients. Accordingly, the department may not withhold the requested information under section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 35376

Enclosures: Submitted documents

cc: Mr. Andrew Prough
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(w/o enclosures)